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The Israeli Law for Enhancement of Competition in the Food Sector

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Report Highlights:

The Israeli Law for Enhancement of Competition in the Food Sector 2014 sets the framework that prohibits certain practices of large suppliers and retailers considered non-competitive in order to rein in food prices. It also requires supermarket chains to publish their prices on Israel's Consumer Protection and Fair Trade Authority website. It also assesses fines on suppliers and retailers that are in violation of its stipulations.

Food Laws:

1. Background

Protests in the summer of 2011 marked a turning point in Israeli antitrust law. The high cost of living brought hundreds of thousands of protestors to the streets, leading to a number of reforms. The Israeli food sector was targeted, as the government appointed a number of committees to examine the level of competitiveness in the marketplace. Based on the committees' conclusions, on March 27, 2014 the Knesset (the Israeli parliament) passed the “Law for Enhancement of Competition in the Food Sector 2014 (Law)”.

Most parts of the food law entered into force on January 15, 2015.

The Law's main objective is to enhance competition in the food sector in order to reduce product prices for consumers by implementing:

- Specific prohibitions for large suppliers (sales that exceeded USD 87 million or suppliers which have been declared a monopoly) and very large suppliers (sales exceeded USD 292 million).
- Specific prohibitions for retailers and large retailers (retailers which hold at least 3 stores in which more than half of the sales are food related, and whose sales exceeded USD 73 million).
- Authority to intervene when retail markets are geographically concentrated; and
- Authority to give special instructions to dominant retailers.

In terms of enforcement, the Law imposes criminal, administrative and civil liability on corporations and their officers.

2. General prohibitions on suppliers and retailers

- A supplier would not dictate, recommend or otherwise intervene with regards to the price or the terms in which the retailer sells a product of a different supplier.
- A retailer would not dictate or recommend or otherwise intervene with a supplier regarding the price or terms in which a different retailer sells to the consumers.

3. Specific prohibitions on large suppliers

The Law prohibits large suppliers from:

- Physically arranging or otherwise intervening in any way in the arrangement of its products on the shelves of a large retailer;
- Dictating, recommending or intervening in certain matters with regards to a retailer, including:
- The price of the supplier's goods, that the retailer sets to consumers, including recommended pricing (the producer/supplier will publish the recommended pricing on the product label, while the retailer can select another price to sell, in that way the customer will know what was the recommended pricing by the producer/supplier)

- The allocation of any amount of available shelf space is available to all suppliers and not just to the large suppliers; prior the law, mainly the big suppliers had the first opprt to choose the available shelf space, while the small suppliers were left only with the shelf that was not chosen by the big suppliers
- Purchasing the supplier's goods as a share of the retailer's total purchase of the goods and its substitute goods;

4. Specific prohibitions on the relations between large suppliers and retailers

The Law sets the following restrictions regarding relations between a large supplier and a retailer:

- A large supplier and a large retailer may not engage in a transaction where a certain portion or bundle of goods is sold below the large retailer's marginal cost of supplying the goods.
- A large supplier and a large retailer may not engage in a transaction where the price of goods or the price of a bundle of goods offered by the supplier is lower or equal to the price offered by the supplier for the purchase of a smaller amount of the same product or for a narrower bundle of products.
- A large supplier may not condition the sale of one of its products with the purchase of another of its products.
- A supplier will not transfer payments to a large retailer, in money or in money equivalent, and a large retailer would not receive such payments; notwithstanding the above, the supplier is not prohibited from reducing the price, subject to the provisions of this Law, of a single product it supplies to the large retailer.

5. Authority to issue instructions to large retailers selling products of large suppliers

The Law empowers the Israeli Antitrust Authority's General Director ("**General Director**") to instruct a large retailer selling the products of a large supplier with regard to actions it needs to take regarding that product or its substitutable products.

6. Provisions regarding the allocation of shelf space to very large suppliers

A large retailer could allocate to the very large suppliers' products a total shelf space of no more than 50 percent in each of the large retailer stores. This means that all the very large suppliers together could not receive more than 50 percent of the total (not divided into categories) shelf space. In practice this will make the very large suppliers to compete against each other for 50 percent of the total shelf space, while the remaining 50 percent would be allocated to other suppliers.

7. Geographic Demand Areas

The General Director may attempt to increase competition under the Law by defining a geographic demand area for each branch of a large retailer and identifying the competitors in each such area. The General Director will then send a notification to any retailer whose share in a relevant area exceeds 30 percent.

Any expansion by such retailer, including opening of a new branch in that location, will require the General Director's approval. The law provides that such approval will be denied unless the retailer is able to show that its expansion is not likely to pose any danger to competition. The law stipulates that the General Director may recommend to the Antitrust Tribunal that a retailer, whose share in a demand area exceeds 50 percent, cease operations in a certain store in that area or sell that store to a third party.

Published Online Prices according to the Food Law:

On May 20, 2015 the published online prices section of the new food law went into effect and requires supermarket chains to publish the prices of every product at every store online on Israel's Consumer Protection and Fair Trade Authority website. A number of websites are expected to provide price comparisons by region.

19 major food chains have committed to publish online the complete price list of their products - including the ones which are on sale. All publications can be seen on Israel's Consumer Protection and Fair Trade Authority website.

What is the purpose of the law re Online Prices?

The goal is transparency in pricing so each citizen can make informed decisions. It is assumed that transparency will lead to competition and lower prices.

Which companies are developing aps/websites for price comparisons, and what do they offer?

Zap and mySupermarket will launch in the coming weeks an app and websites, which will allow consumers to compare prices between the different retailers. Zap's application will allow the surfer to assemble a cart of products he is interested in, and then match the prices of different retailers within a specific radius.

According to Alon Raz, director of Zap, in addition to comparing prices, "The consumer can choose that once in one week or another time period, the system will automatically check the range of products he chose and send a message to the mobile phone of the consumer about the branch having the cheapest prices at the moment. Also, they will offer the possibility to write opinions about food chains and products. "

What are the penalties?

The new amendments to the Consumer Protection Law allow the authority to fine small businesses up to 7,000 shekels for each violation, or up to 25,000 shekels for serious violations. Meanwhile, corporations can be fined 22,000 shekels, or up to 45,000 shekels for serious violations. For chains such as the large supermarkets, if many branches commit the same violations, the fines can be increased by up to 150 percent of these sums.

Are the fines imposed today?

According to the attorney general's directive, the retail food chains will be given three months during which no fines will be implemented. During this period, the Authority will send alerts to the chains.

Israel's Consumer Protection and Fair Trade Authority was established almost a decade ago, [but only recently is it really taking steps to stop businesses from engaging in questionable practices.](#)